STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion **Amendments to 83 Ill. Adm. Code 745**	:	**Docket No. 11-0625**

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES the Staff of the Illinois Commerce Commission ("Staff") by and through its undersigned attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Section 200.830, and files its Reply Brief on Exceptions to the Cable Television and Communications Association of Illinois ("Competitive Providers") Brief on Exceptions To Proposed Second Notice Order filed on May 4, 2012 ("CP BOE") which was filed in response to the Administrative Law Judge's Proposed Second Notice Order ("Proposed Order" or "PO") issued April 19, 2012. For the reasons set forth in this Reply Brief on Exceptions, the Competitive Providers arguments regarding the alleged deficiencies in the Proposed Second Notice Order should be rejected.

I. Section 745.200(c)

The Proposed Order rejects the Competitive Providers proposed modification concerning the data filing requirements in Section 745.200(c). (83 Ill. Adm. Code 745.200(c); PO at 5-6.) The Proposed Order correctly finds that "Section 13-506.2 does not condition classification for services provided by a non-Electing Provider on the

presence of [*sic*] any other status of Electing Providers, but rather specifies the conditions under which telecommunications services are to be classified as competitive." (PO at 6.) The Competitive Providers take exception to this analysis. The Competitive Provider's arguments are incorrect and their resulting exceptions should be rejected.

The Competitive Providers argue that they "have never proposed conditioning the classification of any service on the status of an Electing Provider." (CP BOE at 2) The Competitive Providers, however, explained in their initial comments that "it should be sufficient for any other competitive provider to establish that its service is competitive by the identification, for some class or group of customers, that such service its functional equivalent or a substitute service is reasonably available from an Electing Provider." (CP Comments at 2). Thus, under their proposal, competitive classification could be determined solely by the presence of an Electing Provider serving an identified class or group of customers. In other words, the Competitive Providers condition the classification of any service on the presence and status of an Electing Provider. The Proposed Order does not err in interpreting the Competitive Provider's proposal.

The Competitive Providers assert that, under their proposal, telecommunications carriers would continue to "have the ability to provide the same data for a competitive classification as currently provided." (CP BOE at 4) It is not clear what the relevance of this assertion is. It is certainly the case that, under the Competitive Provider's proposal, a telecommunications carrier can submit information that the Commission currently requires in order to classify services according to Section 13-502 of the Public Utilities Act ("Act"). (220 ILCS 5/13-502) The problem with the Competitive Providers proposal

is, however, that it allows telecommunications carriers to forego submission of the information that the Commission currently requires to implement Section 13-502 of the Act and, instead, allows them to supply more limited information regarding the presence and status of an Electing Provider.

The Competitive Providers argue that their more limited filing requirement option is appropriate because "the General Assembly determined that in a geographic area where an Electing Provider is providing residential and business telecommunications service to end users, such services are reasonably available to those customers from more than one provider, as a matter of law (CP BOE at3). The General Assembly did no such thing. Election of market regulation is conditioned on the filing of written notice of election with the Commission, which includes specification of the service area where market regulation shall apply and certain commitments made by the Electing Provider. (220 ILCS 5/13-506.2(b)) Nothing in Section 13-506.2 conditions election of market regulation on services being reasonably available to customers in an area from more than one provider.

In enacting Public Act ("PA") 96-0927, the General Assembly created a new type of regulation, Market Regulation. (220 ILCS5/13-506.2) The General Assembly further specified that the classification requirements included in Section 13-502 of the Act cease to apply to Electing Providers. (220 ILCS 5/13-506.2(k)) The Part 745 adopted in the Proposed Order implements these changes by removing the existing filing requirements implementing Section 13-502 as they apply to Electing Providers. In enacting PA 96-0927, the General Assembly certainly could have, but did not alter the classification requirements of Section 13-502 as they apply to carriers that do not elect

market regulation. Consistent with the General Assembly's actions, the Part 745 adopted in the Proposed Order retains the existing filing requirements implementing Section 13-502 as they apply to carriers that do not elect market regulation. The Proposed Order does not err in this respect, and the Competitive Providers assertions to the contrary should be rejected.

II. Section 745.40(c)

The Proposed Order correctly declines to adopt the Competitive Provider's proposed modification regarding the correction of "unique error" in Section 745.40(c) because it is "not reasonable…will create confusion in the rule, burden Staff in the Commission's Clerk's Office and cause administrative inefficiency." (PO at 6)The Competitive Provider's argue that their proposed language is "merely enabling language." This, however, does not address the Proposed Order's finding, referenced above, that the language will create confusion in the rule.

The competitive providers argue that the term "unique error" is undefined and offer a definition stating "A 'unique error' refers to an error, and includes all repetitions of the same error (e.g., in a tariff section heading appearing on two or more tariff pages) and is other than a typographical error." (CP Comments, at 3; CP BOE at 5)) Staff agrees with the PO's rejection of this proposal.

Section 745.40(a) (83 Ill. Adm. Code 745.40(a)), as submitted on first notice, enumerates the four types of errors that are subject to temporary correction under Section 745. These are errors in: (1) company name; (2) incorrect sheet revision number; (3) incorrect issue and/or effective dates; and/or (4) coding errors. These are the administrative errors that are the subject of Section 745.40. The Competitive

Providers proposal only creates confusion in the rule by implying that these are not the types of errors at issue. (Staff Reply Comments at 4) In particular, the Competitive Providers, within their definition of "unique error" provide an example of an error in which a tariff section heading appears on two or more tariff pages. (CP Comments at 3) This is not one of the four types of errors enumerated in Section 745.40(a) and, therefore, suggests that the errors identified in Section 745.40(a) are either not the types of errors at issue in Section 745.40 or that they do not constitute a complete list of possible errors. Neither is the case. The implication that errors identified in Section 745.40(a) are either not the types of errors at issue in Section 745.40 or that they do not constitute a complete list of possible errors, particularly in the absence of an enumerated list of errors that the Competitive Providers envision, only create confusion in the proposed rule. (Staff Reply Comments at 4)

The Proposed Order is also correct in rejecting the Competitive Providers attempts to define a unique error to include "all repetitions of the same error." (PO, at 6; CP Comments, at 3)) Limiting the number of fixes that the Commission Staff or the filing carrier is permitted to make on a temporary basis balances the desire to allow for some flexibility with respect to corrections with the desire to avoid acceptance of filings containing numerous errors. Counting repetitions of the same error as a single error could result in the need for Commission Staff to make changes to hundreds of pages of tariff filings. This is not, in Staff's opinion, the intent of this Section of Part 745. It is also inconsistent with good administrative efficiency. Staff believes the term "unique" to require no definition in the rule as it should be read to have the commonly understood meaning of a single, solitary, or lone occurrence. (*Id.*)

While the Competitive Providers argue that "[t]there is no requirement or compulsion regarding Staff in the amendment proposed by the Competitive Providers" (CP BOE at 5), Staff believes the language adopted in the Commission's Final Order should clearly identify what errors the Staff and/or filing carrier are enabled to correct. Open ended enabling language does not define for filing carriers the limits to which Staff believes the Commission should go in allowing for temporary corrections. The Proposed Order correctly rejects the Competitive Providers' proposed modification regarding the correction of "unique errors."

III. CONCLUSION

For all the reasons above, the Commission should reject in their entirety the Exceptions submitted by the Competitive Providers.

Respectfully submitted,

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